The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

February 28, 2006

D.T.E. 05-86

Investigation by the Department of Telecommunications and Energy on its own Motion into Standards for Arrearage Management Programs for Low-Income Customers, Pursuant to St. 2005, c. 140, § 17.

ORDER ESTABLISHING STANDARDS FOR ARREARAGE MANAGEMENT PROGRAMS FOR LOW-INCOME CUSTOMERS

I. INTRODUCTION

On December 1, 2005, pursuant to St. 2005, c. 140, § 17 ("Act"), the Department of Telecommunications and Energy ("Department") initiated an investigation relative to standards for arrearage management programs ("AMPs") for low-income customers of jurisdictional electric and gas companies organized pursuant to G.L. c. 164. The Department held a public hearing on January 6, 2006.

Advocacy groups including the Low-Income Energy Affordability Network ("LEAN"), the Massachusetts Energy Directors Association, Action For Boston Community Development ("ABCD"), the Massachusetts Community Action Programs Directors ("CAP agencies"), Citizens For Citizens and Action Energy (collectively, "low-income advocates") testified at the public hearing.[1] The Attorney General of the Commonwealth ("Attorney General") attended the public hearing. On or before January 17, 2006, most companies,[2] low-income advocacy groups and the Attorney General submitted written comments to the Department. Companies responded to a Department information request on or before February 7, 2006.[3]

Pursuant to § 17 of the Act, each electric and gas company filed an AMP on or before December 30, 2005, for the Department's review for compliance with standards established by the Act. The Act directs the Department to review, approve and order modifications, if

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1 Several members of the public testified on the rising cost of energy and their difficulty making timely utility payments.

2 Some companies submitted amendments to their filings in lieu of comments.

3 On its own motion, the Department admits into the record each company's response to the information request.

necessary, by February 28, 2006. In addition, the Act directs the Department to review the AMPs annually and authorizes the Department to order modifications in an AMP at any time.

In this Order, the Department sets standards for AMPs. The Department reviews the AMP filed by each gas and electric company. Next, we address the appropriate mechanism for companies to recover the incremental costs of offering AMPs. Finally, we discuss program evaluation and reporting.

II. STATUTORY INTERPRETATION OF ST. 2005, C. 140, § 17

St. 2005, c. 140, § 17 (a) and (b) set forth two distinct requirements applicable to jurisdictional electric and gas companies organized pursuant to G.L. c. 164. Subsection (a) requires each company to offer an AMP to "eligible low-income customers, as defined under chapter 164;" establishes general requirements for all AMPs; and authorizes the Department to set additional requirements. Id. The Act states that AMPs must offer low-income customers an affordable payment plan with credits toward an accumulated arrearage to be awarded when the customer complies with the program. Id. The Act requires that each AMP is coordinated with the low-income weatherization and fuel assistance agencies and services. Id.

Subsection (b) requires that each company offer all low-income customers with an account in arrears, if utility service has not yet been terminated, a "payment plan" of no less than four months, with a down payment of no more than 25 percent of the total arrearage. Id. at (b). The remaining arrears balance is divided into equal payments. Id. A company may seek approval from the Department for a payment agreement of less than four months for "good cause shown," and must inform the customer of the request. Id. Customers may seek

and obtain a payment plan greater than four months, and the Department may order a payment plan greater than four months. Id. Companies need not seek Department approval for a granting a payment plan greater than four months. LEAN states that some companies have confused the requirements in the two subsections of § 17, and as a result have misconstrued the Act's reference to a down payment (LEAN Comments at 5). The Attorney General states that confusion exists among the parties as to the required down payments for a payment plan (Attorney General Comments at 2).

LEAN suggests that in § 17(b), the Legislature was addressing uncertainty as to whether a company may require a down payment of more than 25 percent of an overdue amount to establish a "payment plan" as defined in department regulations at 220 C.M.R. § 25.01 (LEAN Comments at 4). LEAN argues that the Legislature intended the reference to "the initial down payment of 25 percent" to refer to payment plans only, not AMPs (id.).

Department regulations define "payment plan" as "a deferred payment arrangement applied to an amount of past due charges. Said arrangement shall extend over a minimum of four months, or such other period approved by the Department's Consumer Division, whereby equal payments of said past due charges in addition to currently due charges are billed to the customer."

Section 17 (b) refers to "payment plans," but makes no reference to "arrearage management." In addition, the description of "payment plan" set forth in § 17(b) is consistent with the Department's definition of "payment plan" at 220 C.M.R. § 25.01. Therefore, the Department concludes that the Legislature intends to clarify that companies may require a

down payment of no more than 25 percent of the arrears to initiate the "payment plan" defined at 220 C.M.R. § 25.01, and that the 25 percent cap does not apply to AMPs. The Act does not address down payments to initiate AMPs, and as result, neither prohibits nor requires a down payment to initiate an AMP.

III. PROPOSED ARREARAGE MANAGEMENT PROGRAMS

Proposed AMPs represent a spectrum of payment terms and forgiveness credits. By varying the amount of the credits, establishing an annual or lifetime cap, or by tailoring the schedule of the award of the credits, companies propose varying incentives for participants' compliance with an AMP.

NSTAR's AMP is part of a settlement with LEAN, Associated Industries of Massachusetts and the Attorney General, approved by the Department in Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company, D.T.E. 05-85 (2005). Western Massachusetts Electric Company ("WMECo") and Unitil Service Corporation ("Unitil") submitted AMPs that the Department approved as part of other proceedings. Western Massachusetts Electric Company, D.T.E. 04-106 (2004); Fitchburg Gas and Electric Company, D.T.E. 05-29 (2005).

Every company links income eligibility for the AMP with income eligibility for the discount rate, any means-tested public benefit, or verification of eligibility for the low-income home energy assistance program ("LIHEAP").[4] A customer is eligible for the discount rate

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[4] In addition to the AMP that KeySpan offers to LIHEAP-eligible customers, the company offers an additional program, On-Track, that offers arrearage management to customers who do not receive LIHEAP benefits and are within 250 percent of the

and LIHEAP if his household's gross income does not exceed 200 percent of the federal poverty. G.L. c. 164, § 1F (4)(i).

Three companies, Berkshire Gas Company ("Berkshire"), KeySpan Energy Delivery New England ("KeySpan") and New England Gas Company ("NEGC"), propose limiting eligibility to heating customers. Berkshire proposes to limit eligibility to heating customers with arrears accrued during the winter months only.

All companies propose a minimum arrearage, ranging from $100 to $600 to qualify for an AMP. Six companies require that the arrearage is at least 60 days overdue. Seven of nine companies require participants to enroll in a budget or levelized billing plan for current charges concurrent with making payments toward the arrearage.

Proposed forgiveness credits range from a flat $150 credit to a $3,000 lifetime cap (NEGC Filing at 3; Berkshire Filing at 1). Berkshire proposes the $3,000 lifetime cap, but limits the forgiveness to 50 percent of the arrears. Other companies do not establish a lifetime cap, but establish an annual cap. Two companies set the maximum benefit at $400 per year Blackstone Filing at 1; KeySpan Comments at 3). Two companies propose to forgive up to 100 percent of the arrearage with an annual maximum of $599 per year (NSTAR Filing, Attachment A, at 1; WMECo Filing at 5). One company proposes to set the maximum possible credit as a percentage of the arrears (67 percent), up to $1,000 (National Grid Comments at 2). Most companies award the forgiveness credit in monthly or biannual

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federal poverty line.

installments in exchange for timely payments made toward the arrears. Two companies propose to award the credit after the customer completes the last payment toward the arrearage (NEGC Filing at 3; Blackstone Filing at 1).

Three companies propose requiring a 25 percent down payment to enroll in the AMP. One proposes a 15 percent to 25 percent down payment for AMP participants (Blackstone Filing at 1). Four companies will not require a down payment.

IV. PROGRAM STANDARDS

A. Introduction

The Act directs the Department to develop standards that shall apply to each electric and gas company's AMP. St. 2005, c. 140, § 17 (b). The Act establishes that each gas and electric company must offer eligible, low-income customers an affordable payment plan with credits toward an accumulated arrearage, to be awarded if the customer complies with the program. In addition, the Act requires that companies coordinate their AMPs with the low-income weatherization and fuel assistance agencies and services.

B. Summary of Comments

The Attorney General states that the Department should allow flexibility in AMPs while ensuring that programs will benefit customers and meet the minimum statutory requirements (Attorney General Comments at 1). Low-income advocates do not favor any particular program model, stating that the most effective design for an AMP is unknown (Tr. at 12, 13, 21, 22, 25). The National Consumer Law Center ("NCLC") states that it is advantageous to have a variety of programs so that each may be evaluated for effectiveness (Tr. at 25). LEAN

supports different program models moving forward, as long as the programs are of serious size and intent. LEAN states that AMPs are in "an experimental stage;" therefore, time is needed this winter to work out program details between utility companies and social service agencies (Tr. at 21).

National Grid states that different program models will allow for evaluation of various programs to develop a "better understanding of what makes an effective arrearage management program" (National Grid Comments at 3). In addition, differences may be necessary because of differences in information technology used by utilities (id.). Bay State comments that the Department should establish applicable guidelines as the programs mature over time, but it is too early now for the Department to prescribe specific funding levels or forgiveness credits. (Bay State Comments at 3).

C. Definition of Low-income

Section 17(a) states that companies shall offer an AMP to "eligible, low-income customers, as defined in chapter 164." G.L.c. 164, § 1F states that eligibility for the low-income discount rate is established upon verification of receipt of any means-tested public benefit, or verification of eligibility for LIHEAP. Qualified LIHEAP and discount rate recipients have household incomes not exceeding 200 percent of the federal poverty line. Id. Every company has proposed linking eligibility for AMPS with eligibility for LIHEAP or the low-income discount rate. The Department endorses this interpretation of "low-income," as it is consistent with the Act.

D. Limitation to Heating Account Customers

Three companies, Berkshire, KeySpan and NEGC, propose limiting eligibility to heating customers. Berkshire proposes to limit eligibility to heating customers with arrears accrued during the winter months only.

In facilitating payment plans, the Department does not differentiate among uses of electricity or gas. Non-heating electric customers often require electricity to operate a heating system regardless of the fuel source. Low-income consumers heating with one fuel source may supplement with another fuel source when temperatures dictate, a heating fuel bill is high, or when one source of fuel is no longer available. For example, an electric heating customer may supplement with heat from a gas stove, or a gas heating customer may supplement with an electric space heater. Therefore, the Department concludes that companies must offer AMPs to both heating and non-heating account customers, who are otherwise eligible for participation.

E. Down Payments

Bay State, Berkshire, NEGC and Unitil propose requiring a down payment not exceeding 25 percent of the amount in arrears to enroll in an AMP. Blackstone proposes a 15 percent to 25 percent down payment for AMP participants. The remaining four companies will not require a down payment.

Although KeySpan's AMP does not require a down payment, the company stated that the Act requires AMP participants make a 25 percent down payment (Tr. at 78, 84-85). LEAN and Attorney General agree that some companies may have misconstrued the Act's

reference to a down payment (LEAN Comments at 5;Attorney General Comments at 2). LEAN argues that the Act does not require or imply that AMP participants make a down payment (LEAN Comments at 4; Tr. at 26).

LEAN also argues that down payments of a pre-determined, unaffordable amount should not be required for AMP participants (LEAN Comments at 1, 4). Specifically, low-income advocates request that the Department remove a down payment provision from NEGC's proposed AMP (LEAN Comments at 5). NEGC proposes requiring a down payment up to 25 percent of the arrears. The Department notes that fuel assistance agencies, through the low-income advocates, entered into agreements to administer AMPs for two companies with a down payment component.[5]

No compelling reason has been presented for the Department to disallow a down payment provision for NEGC while allowing a similar provision for other companies. In addition, low-income advocates acknowledge that the most effective program model cannot yet be determined. Therefore, it is too early to assess the effect of a down payment provision on the success of a program. Section 17 (a) of the Act neither prohibits nor requires a down payment to initiate an AMP. As the Act is silent on the matter of down payments, the Department will allow the proposed down payments provisions, at least until such time that the effect of a down payment on the success of an AMP may be evaluated.

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[5] The two companies referred to are Bay State and Unitil.

F. Conclusion

The Department is hesitant to set rigid program standards when even the staunchest advocates for AMPs agree that the most successful program design is, as yet, unknown. Broad and flexible standards will encourage the development of innovative and cost-effective programs. Such standards allow companies to launch or continue various programs, and give the companies, low-income advocates and the Department an opportunity to evaluate the effectiveness of different program designs. In addition, broad standards will allow sufficient room for adjustment, if necessary, upon the Department's annual review of the AMPs.

Therefore, the Department adopts the broad standards forth in the Act. Each gas and electric company shall offer an arrearage management plan to low-income customers, as defined under G.L. c. 164. An AMP must offer participants an affordable payment plan with credits toward an accumulated arrearage to be awarded for compliance with the program. Each AMP shall be coordinated with the low-income weatherization and fuel assistance agencies and services within the company's service territory. In addition, companies must offer AMPs to customers with non-heating accounts, who are otherwise eligible for participation.

V. COST RECOVERY

The Legislature has mandated that each gas and electric distribution company offer an AMP to eligible low-income ratepayers. In administering an AMP, a company may incur additional expenses directly related to its program (i.e., arrearage forgiveness costs). Similar to the recent Department-directed low-income discount computer matching program,

companies may incur a decrease in revenues from the required implementation of new or expanded AMP. Low-Income Discount Participation Rate, D.T.E. 01-106-B (2004); D.T.E. 01-106-A (2004). It is appropriate to establish a mechanism for companies to recover incremental expenses directly related to an AMP because the decrease in revenues results from a legislative mandate. Id. at 9; D.T.E. 01-106-A, at 18-19. The AMP costs should be recovered from all ratepayers, as are lost revenues resulting from the low-income discount and computer matching program. Low-income advocates support full recovery of the AMP costs from ratepayers, but express no preference for any particular method of cost recovery (LEAN Comments at 2).

Companies propose varying methods to recover AMP costs. Six companies propose to recover AMP costs through the Residential Assistance Adjustment Factor ("RAAF") approved by the Department in Low-Income Discount Participation Rate, D.T.E. 01-106-C/05-55/05-56 (2005). Companies forecast the RAAF for twelve months and include this amount in distribution rates. Any subsequent over- or under-recoveries are reconciled in the following year (for gas companies concurrently with peak/winter LDAF filings; for electric companies concurrently with annual transition charge reconciliation filings) with interest calculated at the prime rate. Id. at 8-12.

Other companies propose to recover distribution-related AMP costs through base distribution rates, with gas-related costs to be recovered in the CGAC and electric

supply-related costs recovered as a component of basic service. WMECo[6] and Bay State Gas propose to defer AMP costs and recover them in their next base distribution rate case. KeySpan does not recover costs related to Boston Gas' existing On-Track program. Boston Gas Company, D.T.E. 03-40, at 509 (2003).

Deferring cost recovery until a future rate case is reasonable under some circumstances. North Attleboro Gas Company, D.P.U. 93-229, at 4-6 (1994). However, the Department generally discourages deferrals. Standard Offer Service Fuel Adjustment, Letter to Electric Companies, D.T.E. 00-66, 00-67, 00-70, at 3-4 (December 4, 2000). In addition, it is administratively efficient to establish a uniform cost recovery mechanism for all companies. The RAAF is an established reconciling mechanism, employed by all gas and electric companies to recover costs related to the low-income discount. The Department concludes that is appropriate to expand the RAAF to include incremental costs related to the AMP and directs every company to recover costs through this mechanism.[7]

Berkshire and Unitil propose to recover distribution-related AMP costs through the RAAF, but energy-related AMP costs through the CGAC or as a component of basic/default

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[6] In accordance with Article VIII of the rate settlement agreement approved by the Department in Western Massachusetts Electric Company, D.T.E. 04-106 (2004), WMECo is currently deferring with interest the expenses in excess of the benefits of expanding its existing AMP called NUStart.

[7] The Department notes that any cost recovery mechanism would not apply to KeySpan's On-Track program. KeySpan shareholders would continue to bear responsibility for costs of the existing On-Track program serving Boston Gas customers only. Regarding WMECo's NuStart program, expenses through February 28, 2006 shall be recovered in the next distribution rate case pursuant to the settlement agreement. Expenses for NuStart beginning on March 1, 2006 shall be collected through the RAAF.

service. To prevent customers purchasing commodity on the competitive market from avoiding the energy portion of the AMP cost, the Department determines that it is appropriate for all costs to be recovered through the RAAF.

V. ARREARAGE MANAGEMENT PROGRAM EVALUATION

A. Summary of Comments

KeySpan states that it will determine program benefits by analyzing savings through a reduction in the collection costs, shut-off costs and uncollectible costs (KeySpan Comments at 4). KeySpan will deduct these savings from the AMP costs, to determine if the program is beneficial (id.). NSTAR proposes a similar strategy (NSTAR Filing at 3).

National Grid recommends certain items that should be measured to evaluate program effectiveness (percent of participants successfully completing program; percent remaining current after completion in program for six, twelve, eighteen and twenty-four months). (National Grid Comments at 5). Bay State recommends convening a working group, subsequent to the issuance of an order, to develop a measurement for program benefits and costs (Bay State Comments at 7).

LEAN suggests a list of specific data points to be collected every month for evaluating the effectiveness of AMPs and informing the design of low-income energy programs (LEAN Comments at 7). LEAN expresses interest in working with the Department and companies to develop a reporting protocol that satisfies objectives while minimizing the burden to companies (id.) LEAN suggests that the Department hold a technical session for this purpose (id.).

B. Discussion

Through data collected and reported to the Department, we intend to evaluate how the amount of forgiveness credits, down payments, as well as other variables effect the success of an AMP. The Department will convene a working group of interested parties, including electric and gas companies and low-income advocates, for the purpose of establishing a method of program evaluation and a reporting schedule. To that end, companies are directed to submit to the Department proposed criteria for reporting data by March 15, 2006. The Department encourages the submission of joint proposals. The Department will then schedule a technical session to discuss the proposals. The Department anticipates developing reporting criteria within three months of issuance of this Order with actual reporting to commence no later than six months from issuance of the Order. Companies will submit AMPs on February 28, 2007. By that time, companies will have reported six months of data. Among the issues that the Department anticipates reviewing at the end of the first year is the amount of forgiveness credits and down payments.

VI. CONCLUSION

The Department adopts the broad standards established in the Act. Each gas and electric company shall offer an arrearage management plan to low-income customers, as defined in G.L.c. 164. An AMP must offer participants an affordable payment plan with credits toward an accumulated arrearage to be awarded for compliance with the program; and that is coordinated with the low-income weatherization and fuel assistance agencies and services within the company's service territory. In addition, the Department prohibits

companies from excluding customers with non-heating accounts, who are otherwise eligible for participation in an AMP.

In adopting these broad standards, the Department encourages the development of innovative and cost-effective programs. The Department notes that although the Act provides authority for further regulation of down payments, forgiveness credits, and payment terms, we will refrain from setting any supplemental requirements until the AMPs have operated for a sufficient period of time to provide an opportunity for data collection and analysis.

The Department will convene a working group of interested parties so that a method of evaluating program effectiveness is established in cooperation with companies and low-income advocates. Pursuant to the Act, the Department will evaluate each company's AMPs annually. Companies are directed to submit an AMP to the Department by February 28th of each year, beginning in 2007.

The Department directs each company to recover any incremental expenses directly related to an AMP through the RAAF. Each company is directed to file an AMP and tariff that comply with all of the terms set forth above no later than Wednesday March 8, 2006.

VI. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That each gas and electric company shall offer an arrearage management plan to low-income, heating and non-heating account customers, that includes an affordable payment plan with credits toward an accumulated arrearage to be awarded for compliance with the program; that is coordinated with the low-income weatherization and fuel assistance

agencies and services within the company's service territory; and it is

FURTHER ORDERED: That each company will recover any incremental expenses directly related to an AMP through the RAAF; and it is

FURTHER ORDERED: That each gas and electric company shall submit an arrearage management plan and residential assistance adjustment factor tariffs consistent with the standards adopted by the Department no later than March 8, 2006; and it is

FURTHER ORDERED: That each gas and electric company will submit an arrearage management program to the Department annually, beginning on February 28, 2007, and it is

FURTHER ORDERED: That each gas and electric company comply with all directives contained in this Order.

By Order of the Department,

/s/
Judith F. Judson, Chairman

/s/
James Connelly, Commissioner

/s/
W. Robert Keating, Commissioner

/s/
Paul G. Afonso, Commissioner

/s/
Brian Paul Golden, Commissioner